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| Division of Children and Family Services Protection and Safety Procedure Update #9-2014 | |
| Regarding: | Adoption Assistance Payments |
| Rescinds & Replaces: | Administrative Memo #3-09 Adoption Assistance Payments |
| Date Effective: | December 15, 2014 |
| Contact: | Manuel Escamilla or Manuel.Escamilla@nebraska.gov Chris Jones or Christine.Jones@nebraska.gov |
| Issued by: | Thomas D. Pristow, Director, Division of Children and Family Services |

Philosophy:

When originating a subsidized adoption agreement there are existing regulations that need to be followed for establishing the subsidized adoption payments with adoptive parent(s). A procedural change and reminders are necessary to insure regulations are being followed for subsidized adoption agreements.

Procedure:

Each year the State Auditor conducts an audit of Federal (IV-E) adoption assistance cases. Sample cases are chosen from all cases in which a payment was made during a specified 6 month period. These same cases are reviewed by Child Welfare program staff in Central Office, for factors not reviewed by the auditors. In addition Central Office program staff review other cases that are brought to their attention for a variety of reasons. The following procedure change and reminders are being provided based on current and past audits.

1. Instructions for Adoption Subsidy Agreement, found in the Adoption Subsidy Guidebook (page 46), state only the signatures of the “worker”, “Supervisor” and the adoptive parent(s) are required. As of the effective date of this memo, the requirement is changed to include the signature of the:
 - a. Adoptive parent(s), and
 - b. DHHS-CFS Specialist, and
 - c. DHHS-CFS Supervisor, and
 - d. DHHS-CFS Administrator.

The expectation is that the Supervisor will review the agreement and assure its accuracy prior to signing. If the Supervisor cannot be present when the adoptive parent(s) signs the agreement, it is recommended that s/he review and sign the agreement before it is presented to the adoptive parent(s) for signature. Once the agreement is signed by the adoptive parent(s), the DHHS-CFS Specialist, and the DHHS-CFS Supervisor, the agreement is routed for signature by the designated DHHS-CFS Administrator. In no case will the agreement be considered final until all

parties have signed the agreement. The DHHS-CFS Administrator will assure all parties have signed the agreement as required.

NOTE: All signatures on the agreement for subsidy must be dated prior to the date of adoption finalization. 390 NAC 6-003.02D. The date of the finalization of the adoption shall be considered the date of the Adoption Decree.

2. Payment of legal fees for finalization of an adoption: The following language is found at 390 NAC 6-003.02C2, 3.a., and at 479 NAC 8-001.02C2, 3.a.:

"a. Legal fees for the adoption (may include services of an attorney to terminate parental rights, if this is occurring as a part of the adoption proceeding). The maximum amount to be paid must be specified on the subsidy agreement. "

In some cases reviewed, it was found that legal fees were paid in error, because the payment was greater than the amount in the subsidy agreement.

Reminder:

- a. The "maximum amount to be paid" is the total payment to the attorney, including not only the attorney's services, but also any other fees, e.g. filing fees, that the attorney charges. 'It is not acceptable for the agreement to have statements such as, "Attorney fees of \$500, plus filing fees," or "Attorney fees of \$100/hour."
- b. It is the responsibility of the DHHS-CFS Specialist to assure that the adoptive parent(s) understand(s) that:
 - The Department's payment to an attorney will be no more than the amount in the agreement; and
 - If the attorney representing the adoptive parent charges more than specified in the agreement, the difference will be the responsibility of the adoptive parent. In the process of hiring their attorney, the adoptive parent(s) should discuss with the attorney the amount to be billed and the payment source.

3. Payment of maintenance under subsidized adoption agreements: The following language is found at 390 NAC 6-003.02D and 479 NAC 8-001.02B5:

"Before the date of the adoption finalization, the application and agreement for subsidy, specifying type, amount, purpose and duration of subsidy must be completed and approved by (the) designated staff person in charge of (the) subsidized adoption."

In some cases, the amount of maintenance payment being made was either less than or more than the amount specified in the agreement, resulting in an error.

Reminder: The maintenance payment received by the adoptive parent must match the amount specified on the subsidy agreement.

Caution must be used to assure that this match exists. If an error is found, one of the following corrective actions is necessary:

- a. If the payment is less than the amount in the subsidy agreement, the payment must be increased, unless the adoptive parent has agreed in writing to the lower amount. If the parent has agreed to the lesser amount, a revised subsidy agreement must be done;
- b. If the payment is more than the amount in the subsidy agreement, the payment being made must be decreased to the amount stated in the agreement. Notice must be sent to the adoptive parent explaining that the amount was in error and that the corrected amount is the amount in the subsidized adoption agreement, which is a legal document. The notice also must tell the adoptive parent that an appeal can be filed and that the adoptive parent has the right to request an increase in the maintenance payment (see Adoption Services Guidebook, pp. 48-49 for additional information).
- c. If an overpayment has occurred and the adoption subsidy is a federal subsidy, notice must be sent to Manuel Escamilla for purposes of correcting the Department's claim for federal funds.

4. Documentation of Adoption Assistance Payments

- a. The Adoption and Foster Care Analysis and Reporting System (AFCARS) collects case-level information from state and tribal title IV-E agencies on all children in foster care and those who have been adopted with title IV-E agency involvement. Title IV-E agencies are required to submit the AFCARS data twice a year based on two 6-month reporting periods.
- b. In order to provide accurate data regarding Adoption Assistance in AFCARS, documentation in the Statewide Information System, known in our state as N-FOCUS is required.
- c. DHHS-CFS Specialists and DHHS-CFS Supervisors shall document within N-FOCUS, under the red Subsidy button, the child, their eligibility determination and amount approved for subsidy.



1. Make the selection of the appropriate child.
2. Select the type of subsidy: Adoption or Guardianship
3. If applicable, use the check box to select there was a pre-existing condition identified for the child.
4. Select one or more eligibility reasons, and using "Actions" select the "primary special need" after highlighting the eligibility reason. For example, if a child qualifies for subsidy by their age, but they also have mental/learning disabilities and emotional/psychiatric disabilities- highlight Age, go to actions and "Set/Reset Primary Special Need."

5. Using the drop down box, enter the final determination of the approval to demonstrate the child is “eligible”, “ineligible” or “cannot be determined.”
6. Under subsidy information, search and select the Payee Name, the status of the approval, the status and decision date.
7. Using the Payments push bar, enter the amounts approved in the subsidy*. Select whether they are recurring or nonrecurring.

*A conversion calculation will need to be made to enter a monthly rate, from the current Nebraska Caregiver Responsibilities Tool which provides a daily rate. To calculate the monthly rate, multiply the daily rate by 365 days and divide by 12 months. [(daily rate x 365) / 12 = monthly rate]

References:

390 NAC 6-003.02C2
390 NAC 6-003.02C2, 3.a
390 NAC 6-003.02D
479 NAC 8-001.02B5
479 NAC 8-001.02C2, 3.a
Guidebook Page 46, 48, and 49